

## Small Business Administration

## § 127.102

### § 127.101 What type of assistance is available under this part?

This part authorizes contracting officers to restrict competition to eligible WOSBs for certain Federal contracts in industries in which the Small Business Administration (SBA) determines that WOSBs are underrepresented or substantially underrepresented in Federal procurement and in which the procuring agency has satisfied itself through appropriate analysis (including analysis of its own procurement history), that the set-aside would meet all applicable legal requirements, including the equal protection requirements of the Due Process Clause of the Fifth Amendment of the Constitution.

### § 127.102 What are the definitions of the terms used in this part?

For purposes of this part:

*8(a) Business Development (8(a) BD) concern* means a concern that SBA has certified as an 8(a) BD program participant.

*AA/GC&BD* means SBA's Associate Administrator for Government Contracting and Business Development.

*Central Contractor Registration (CCR)* means the system that functions as the central registration and repository of contractor data for the Federal government. CCR also serves as the single portal for conducting searches of small business contractors. Prospective Federal contractors must be registered in CCR prior to award of a contract or purchase agreement, unless the award results from a solicitation issued on or before May 31, 1998.

*Citizen* means a person born or naturalized in the United States. Resident aliens and holders of permanent visas are not considered to be citizens.

*Concern* means a firm that satisfies the requirements in § 121.105 this chapter.

*Contracting officer* has the meaning given to that term in Section 27(f)(5) of the Office of Federal Procurement Policy Act (codified at 41 U.S.C. 423(f)(5)).

*D/GC* means SBA's Director for Government Contracting.

*Economically disadvantaged WOSB (EDWOSB)* means a concern that is small pursuant to part 121 of this title and that is at least 51% owned and controlled by one or more women who are

U.S. citizens and who are economically disadvantaged in accordance with §§ 127.200, 127.201, 127.202 and 127.203. An EDWOSB automatically qualifies as a WOSB.

*EDWOSB requirement* means a Federal requirement for services or supplies for which a contracting officer has restricted competition to EDWOSBs.

*Immediate family member* means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, and daughter-in-law.

*Interested party* means any concern that submits an offer for a specific EDWOSB or WOSB requirement, the contracting activity's contracting officer, or SBA.

*ORCA* means the Online Representations and Certifications Application at <https://orca.bpn.gov>, a required registration for contractors interested in bidding on most Federal contracts.

*Primary industry classification* means the six-digit North American Industry Classification System (NAICS) code designation that best describes the primary business activity of the concern. The NAICS code designations are described in the NAICS manual available via the Internet at <http://www.census.gov/NAICS>. In determining the primary industry in which a concern is engaged, SBA will consider the factors set forth in § 121.107 of this chapter.

*Small disadvantaged business (SDB)* means a concern that SBA has certified in accordance with subpart B of part 124 of this chapter, and is designated on CCR as an SDB.

*Substantial underrepresentation* means a disparity ratio between 0.0 and 0.5; i.e., the ratio representing the WOSB share of Federal prime contract dollars divided by the WOSB share of total business receipts.

*Underrepresentation* means a disparity ratio between 0.5 and 0.8; i.e., the ratio representing the WOSB share of Federal prime contract dollars divided by the WOSB share of total business receipts.

*WOSB* means a concern that is small pursuant to part 121 of this chapter,

and that is at least 51% owned and controlled by one or more women in accordance with §§127.200, 127.201 and 127.202.

*WOSB requirement* means a Federal requirement for services or supplies for which a contracting officer has restricted competition to eligible WOSBs.

### Subpart B—Eligibility Requirements To Qualify as an EDWOSB or WOSB

#### § 127.200 What are the requirements a concern must meet to qualify as an EDWOSB or WOSB?

(a) *Qualification as an EDWOSB.* To qualify as an EDWOSB, a concern must be:

- (1) A small business as defined in part 121 of this chapter; and
- (2) Not less than 51 percent unconditionally and directly owned and controlled by one or more women who are United States citizens and are economically disadvantaged.

(b) *Qualification as a WOSB.* To qualify as a WOSB, a concern must be:

- (1) A small business as defined in part 121 of this chapter; and
- (2) Not less than 51 percent unconditionally and directly owned and controlled by one or more women who are United States citizens.

#### § 127.201 What are the requirements for ownership of an EDWOSB and WOSB?

(a) *General.* To qualify as an EDWOSB or WOSB, one or more women must unconditionally and directly own at least 51 percent of the concern. Ownership will be determined without regard to community property laws.

(b) *Requirement for unconditional ownership.* To be considered unconditional, the ownership must not be subject to any conditions, executory agreements, voting trusts, or other arrangements that cause or potentially cause ownership benefits to go to another. The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms.

(c) *Requirement for direct ownership.* To be considered direct, the qualifying women must own 51 percent of the concern directly. The 51 percent ownership may not be through another business entity or a trust (including employee stock ownership trusts) that is, in turn, owned and controlled by one or more women or economically disadvantaged women. However, ownership by a trust, such as a living trust, may be treated as the functional equivalent of ownership by a woman or economically disadvantaged woman where the trust is revocable, and the woman is the grantor, a trustee, and the sole current beneficiary of the trust.

(d) *Ownership of a partnership.* In the case of a concern that is a partnership, at least 51 percent of each class of partnership interest must be unconditionally owned by one or more women. The ownership must be reflected in the concern's partnership agreement. For purposes of this requirement, general and limited partnership interests are considered different classes of partnership interest.

(e) *Ownership of a limited liability company.* In the case of a concern that is a limited liability company, at least 51 percent of each class of member interest must be unconditionally owned by one or more women.

(f) *Ownership of a corporation.* In the case of a concern that is a corporation, at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding must be unconditionally owned by one or more women. In determining unconditional ownership of the concern, any unexercised stock options or similar agreements held by a woman will be disregarded. However, any unexercised stock option or other agreement, including the right to convert non-voting stock or debentures into voting stock, held by any other individual or entity will be treated as having been exercised.

#### § 127.202 What are the requirements for control of an EDWOSB or WOSB?

(a) *General.* To qualify as an EDWOSB or WOSB, the management and daily business operations of the concern must be controlled by one or